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September 10, 1985

ATTORNEY GENERAL OPINION NO. 85-116

Peter E. Rinn
Chief Counsel
State Department of Social and
Rehabilitation Services
6th Floor, State Office Building
Topeka, Kansas 66612

Re: Schools--Special Education--State Institutions
Required to Provide Services

Schools--Miscellaneous Provisions--Early Retirement

Synopsis: A contract executed pursuant to K.S.A. 72-970 by the secretary of social and rehabilitation services and Unified School District #273, which does not specifically provide that the secretary shall reimburse the district for contributions to an early retirement incentive program set up by the district pursuant to K.S.A. 72-5395, does not require the secretary to make such contributions for the benefit of teachers for whose services the secretary has contracted. Cited herein: K.S.A. 1984 Supp. 39-708c, as amended by L. 1985, ch. 114, §24; K.S.A. 72-967; 72-970; 72-5395; 72-5396.

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Dear Mr. Rinn:

As chief counsel for the state department of social and rehabilitation services (SRS), and on behalf of Secretary Harder, you request our opinion concerning the obligation and authority of your agency to fund an early retirement incentive program. Specifically, you wish to know whether the department has a statutory obligation under its current contract with Unified School District #273 (the district) to contribute to an early retirement incentive program which was established by the district for its employees assigned to the Youth Center at Beloit, which is an SRS facility for juveniles.

The contract between the district and SRS was entered into pursuant to the mandate of K.S.A. 72-970 and under the authority of K.S.A. 72-967(a) and K.S.A. 1984 Supp. 39-708c, as amended by L. 1985, ch. 114, §24. The district provides teachers and staff to perform special education services for residents at the center. In return, SRS reimburses the district for salaries and other specified expenses of the teachers and staff assigned by the district to service the center. Thus, the teachers and staff are to remain employees of, and are under contract with, the district; SRS is merely to reimburse the district as agreed under the contract in question.

The board of education of each school district is authorized, under K.S.A. 72-5395, to establish an early retirement incentive program for the benefit of the employees of that district. K.S.A. 72-5396 allows the board to budget and expend such amounts for this program as the board may deem to be necessary and desirable.

While the board is authorized to establish such a program, in our opinion it is not authorized to bill SRS for the payment of contributions to the fund when SRS did not agree to make such payments in the contract. The clause in the contract between the secretary and the district which is relevant to this inquiry states as follows:

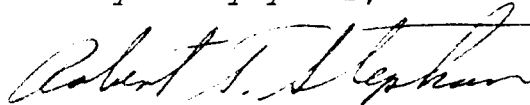
"Reimbursement will be made for the salaries paid to paraprofessionals, special education teachers, office staff, support staff, administrators, and others plus 10% of said salaries for administration fees. In addition to the reimbursement for salaries and administrative fees, reimbursement will be made for FICA, transportation, health insurance, workers' compensation, professional

liability insurance, subsistence, inservice fees and registration, supplies, instructional materials, equipment, contractual services, and other properly incurred expenses."

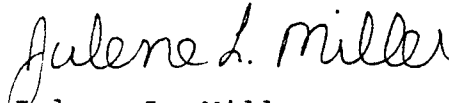
There is an absence of any specific agreement to contribute to an early retirement incentive program. While the catch-all phrase refers to "other properly incurred expenses," contributions to an early retirement incentive program are not "expenses" incurred by reason of employment. Retirement benefits are just that--benefits--and are voluntarily provided for by the employer. In this situation, the district is the employer, and since the secretary of SRS did not agree initially to include the early retirement incentive program in the reimbursement clause quoted above, he is not now obligated to contribute.

In conclusion, the Department of Social and Rehabilitation Services is not obligated under its current contract with Unified School District #273 to financially contribute to an early retirement incentive program established by the district for its employees assigned to the Youth Center at Beloit.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General

RTS:JSS:JLM:jm